

Message Text

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72-60

ACTION DLOS-07

INFO OCT-01 ARA-16 ISO-00 AF-10 EA-11 EUR-25 NEA-14 RSC-01

IO-14 OIC-04 COA-02 EB-11 FEA-02 JUSE-00 INT-08

COME-00 DOTE-00 NSF-04 OMB-01 TRSE-00 SWF-02 AGR-20

ACDA-19 AEC-11 CG-00 CEA-02 FMC-04 EPA-04 SCI-06

CEQ-02 CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03 NSAE-00

NSC-07 PA-04 PRS-01 SP-03 SS-20 USIA-15 CIEP-03 DRC-01

AS-01 /280 W

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R 262149Z AUG 74

FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 5558

C O N F I D E N T I A L CARACAS 8304

FROM US DEL LOS

FOR L-ALDRICH FROM OXMAN

PASS O/LOS - MCINTYRE

EO 11652: GDS

TAGS: PLOS

SUBJ: LOS: UNILATERAL EXTENSION OF FISHERIES JURISDICTION

1. THERE ARE RUMORS HERE THAT IN EXCHANGE FOR TUNA EXCEPTION FROM UNILATERAL U.S. 200-MILE FISHERIES CLAIM AND APPLICATION OF FISHERMEN'S PROTECTION ACT AND POSSIBLY OTHER SANCTIONS LEGISLATION TO TUNA AND SHRIMP, TUNA AND SHRIMP INDUSTRY MAY WITHDRAW OPPOSITION TO BILL. ACCORDINTLY, FISHERMEN'S PROTECTIVE ACT WOULD PRESUMABLY CONTINUE TO APPLY TO TUNA, AND WOULD APPLY TO DENIAL OF FULL UTULIZATION OF SHRIMP. THE QUESTION IS WHETHER THE U.S. CAN MAINTAIN THAT A COASTAL STATE IS FREE TO
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ASSERT JURISDICTION OVER FISHERIES TO 200 MILES, BUT IS NOT FREE

TO ASSERT JURISDICTION OVER TUNA. OBVIOUSLY, WE ARE FREE TO REFRAIN FROM ASSERTING A CLAIM OURSELVES.

2. ARGUMENTS CAN BE MADE THAT ALL STATES HAVE A DUTY TO CONSERVE FISHERIES, AND THAT THE HIGHLY MIGRATORY NATURE OF TUNA REQUIRES COOPERATION AMONG THE STATES CONCERNED. HOWEVER, THIS IS QUITE DIFFERENT FROM MAINTAINING AS A MATTER OF CUSTOMARY LAW THAT THE COASTAL STATE CANNOT REGULATE ACCESS TO TUNA IN A ZONE, BUT CAN REGULATE ACCESS TO OTHER FISH STOCKS, IN THE ABSENCE OF GENERAL AGREEMENT TO THIS EFFECT.

3. THE CREDIBILITY OF U.S. POSITIONS ON INTERNATIONAL LAW QUESTIONS GENERALLY WILL BE ADVERSELY AFFECTED BY AN ATTEMPT TO MAINTAIN THAT CUSTOMARY LAW PERMITS A 200-MILE FISHERIES CLAIM, EXCEPT FOR TUNA. I HAVE ACCORDINGLY ADVISED AMB. STEVENSON AND PROF. MOORE THAT OUR TESTIMONY ON S.1988 ON SEPT. 5 SHOULD CONTAIN THE POINT THAT WE CANNOT CREDIBLY MAINTAIN THIS DISTINCTION INsofar AS THE RIGHTS OF OTHER COASTAL STATES ARE CONCERNED. BOTH ARE PREPARING TESTIMONY HERE AND WILL MAKE DRAFTS AVAILABLE AT EARLIEST POSSIBLE TIME.

4. YOU SHOULD BE AWARE THAT S.1988 MAY ALSO CLAIM JURISDICTION OVER SALMON TO VAST DISTANCES BEYOND 200 MILES. WHILE EA IS DOUBTLESSLY AWARE OF THE CONSIDERABLE POLITICAL SENSITIVITY OF THIS ISSUE IN JAPAN, I MIGHT REPEAT THAT JAPAN HAS WARNED US THAT THE SALMON DISPUTE MAY BECOME "ANOTHER TEXTILES DISPUTE." MOREOVER, THE NEGATIVE LOS IMPLICATIONS--ABOVE AND BEYOND THE IMPLICATIONS OF A 200-MILE FISHERIES CLAIM--ARE ALSO CONSIDERABLE. IN ADDITION, WHILE THERE IS SOMETHING APPROACHING A CONSENSUS HERE ON SOME SORT OF 200-MILE ECONOMIC ZONE, THIS IS NOT THE CASE WITH RESPECT TO JURISDICTION OVER SALMON BEYOND 200 MILES.

5. THE COMBINED EFFECT OF THE TUNA AND SALMON APPROACH IN S.1988 AND THE RELATIONSHIP TO SANCTIONS LEGISLATION GOES FAR BEYOND A CHANGE IN CUSTOMARY LAW ON FISHERIES JURISDICTION AND COASTAL STATE RIGHTS IN A 200-MILE ZONE. IT IS IN EFFECT AN ANNOUNCEMENT OF A FREE FOR ALL IN WHICH STATES MAKE OR REFUSE TO RECOGNIZE CLAIMS THROUGHOUT THE OCEANS AS BEST SUITS THEM. A NEW CUSTOMARY LAW OF THE SEA MIGHT EMERGE AFTER A DECADE OR TWO OF STRUGGLE. IT IS THE IMPLICATIONS OF THAT STRUGGLE
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FOR U.S. INTERESTS, U.S. FOREIGN POLICY, AND U.S. CREDIBILITY THAT ARE INVOLVED.
STEVENSON

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NNN

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